IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.461 OF 2005
IN
SUMMARY SUIT NO.2694 OF 2003

Sitanshu Traders Pvt. Ltd. ..Plaintiffs.
Vs.
M/s.Veegees Ceramics & Ors. ..Defendants.

Ms.Kirti Munshi with Mr.Dinesh Joshi i/b.M/s.Little & Co. for the Plaintiffs.

Mr.Suresh Chandrashekhar for Defendant Nos.1 to 3.

CORAM : S.J. VAZIFDAR, J.
DATED : 20TH DECEMBER, 2005

P.C. :

The suit as originally filed was to recover the price of goods sold and delivered by the Plaintiffs to the Defendants. By an amendment, the Plaintiffs have now sought to recover the amounts based on dishonoured cheques.

2. That the goods were sold and delivered by the Plaintiffs on the terms and conditions contained in the invoice is admitted save and except that it was contended by the Defendants that it was agreed between the parties that the payment would be made only as and when the Defendants in turn managed to sell the said goods to their customers.

3. That the goods have been received by the

Defendants is not denied. The only defence is the one referred to above.

4. Ultimately, a settlement was arrived at between the parties as recorded in the letter dated 8.9.2001. By that letter, six post-dated cheques were issued. The particulars of the cheque are contained in the said letter. It was further recorded as follows :

> "As agreed between us these payments constitute full and final payments towards all outstanding dues as on date."

5. Thereafter, three cheques dated 9.9.2003, 9.10.2003 and 9.11.2003 were honoured and three cheques dated 9.12.2003, 9.1.2004, 9.2.2004 aggregating to the claim in suit were dishonoured. It is admitted that the alleged oral understanding regarding payment not being due by the Defendants till the Defendants sold the Plaintiff’s products is not evidenced by any contemporaneous documents.

6. The Plaintiffs had addressed a letter dated 22.12.2001 in which the aforesaid letter dated 8.9.2001 had been clearly referred to. The fact of

the post-dated cheques was also specifically referred to in paragraph 6 of that letter (Exhibit "I" to the plaint). This letter was replied to two years later by the Defendant's Advocate's letter dated 4.6.2003 (Exhibit "C-1" to the affidavit in reply). The alleged oral agreement is referred to in paragraphs 5 and 6 of this letter. However, as regards the letter dated 8.9.2001 it was stated that the same would constitute a full and final payment of all the outstanding dues of the Defendants and that there would not be any payments due from the Defendants over and above the amount mentioned in the letter dated 8.9.2001. There is no allegation that the post-dated cheques were also to be presented by the Plaintiffs only after the Defendant was able to sell the Plaintiff's goods to their customers. In any event, this letter was written after almost two years of the receipt of the Plaintiff's letter.

7. It is also pertinent to note that three of the aforesaid cheques had been dishonoured.

8. In the circumstances, there appears to be no defence to the claim in the suit. However, there is some dispute about the calculation regarding the

amount claimed. In any event, the Plaintiff would be entitled to the amount of the dishonoured cheques together with interest thereon. The deposit order is accordingly passed after taking into consideration the same.

9. In the circumstances, leave to defend granted to the Defendants conditional upon the Defendants depositing in this Court a sum of Rs.7,00,000/- within three months from today.

10. In the event the Defendants deposit the aforesaid amount, the suit to stand transferred to the list of commercial causes. The Defendants to file their written statement within 30 days. Discovery and Inspection within four weeks thereafter.

11. In the event the Defendants fail to deposit the aforesaid amount, liberty to the Plaintiffs to apply for further orders.

12. On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of 2 years and shall renew the same thereafter for a

period of one year from time to time.

Summons for Judgment stands disposed of accordingly.